IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1156 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHATIYA RATANSHI J SURAIYA

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. The petitioner challenges the order of the State Government dated 19/10/1989 at Annexure-L to the petition rejecting the revision application of the petitioner and

confirming the order of the Collector, Kutch made on 30/3/1988 in a suo-motu revision whereby the Collector set aside the order of the Deputy Collector dated 24/5/1983 by which land admeasuring 2 acres of survey no. 370 P. was given to the petitioner who was the owner of the adjoining land.

2. The petitioner owned survey no. 222 situate on the outskirts of Mandvi and applied for 2 acres out of Kharaba land adjacent to his field. The Deputy Collector allowed that application and granted the land in question on 24/5/1983 on payment of Rs.1500/- being its market price. That amount was paid under receipt no. 106 dated 19/6/1983. The possession of the land in question was handed over under a Panchnama dated 16/8/1983 to the petitioner. The sanctioned land was got surveyed through the District Inspector of Land Records and entry was posted in the village record. According to the petitioner he had spent Rs.15,000/- to Rs.20,000/- on the improvement and development of the land and started raising crops thereon. After a lapse of five years the Collector, Kutch issued show cause notice on 3/2/1988, copy of which is at Annexure-H to the petition and initiated proceedings under section 211 of the Land Revenue Code against the order of the Deputy Collector dated 24/5/1983. The petitioner replied to that notice on 23/2/1988, inter-alia, contending that the initiation of the proceedings was time barred. The Collector, however, made the order setting aside the grant on the ground that the parcel of land which was granted was a fragment and that it was a land by the side of a road with a potential of development and, therefore, should not have been given. That order was challenged by the petitioner before the State Government and the State Government holding that the land was by the side of the road should not have been granted as it had a potential of nonagricultural use rejected the petitioner's revision application.

3. There is no dispute about the fact that the land was granted by the Deputy Collector to the petitioner under his order dated 24/5/1983. The possession of the land was handed over to the petitioner under a Panchnama dated 16/8/1983. The averment of the petitioner that he had spent Rs.15,000/- to Rs.20,000/- on improvement of the land so as to make it cultivable is not denied. The show cause notice for initiating suo-motu revisional proceedings was issued by the Collector after a lapse of

nearly five years on 3/2/1988. In this context the decision of the Supreme Court in State of Gujarat v/s. Raghav Natha reported in 10 G.L.R. 992 would be relevant. It was held by the Supreme Court that though there was no period of limitation prescribed under section 211 of the Bombay Land Revenue Code, it is plain that the said power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order. It was held that section 65 of the Act itself indicated the length of the reasonable time within which the Commissioner must act under section 211. In that case the Commissioner had set aside the order of the Collector more than a year after the order and it was held that the order was passed too late. In the present case five years period that had lapsed would have obviously reassured the petitioner to invest the amount in the development of the land and make it cultivable. The order dated 24/5/1983 was a speaking order and it was mentioned therein that by granting the land in question to the petitioner no Gauchar or reserve land was getting affected. The Mamlatdar had recommended the land to be given to the applicant who owned the adjoining land. The value of the land was fixed on the basis of the valuation suggested by the Panchas. From the notification dated 24/4/1960, a copy of which is at Annexure-N to the petition, it is evident that the area within the limit of the municipal borough was excluded and, therefore, there was no question of any transfer of a fragment in violation of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947. The fact that the land was likely to be used in future for a nonagricultural purpose was hardly relevant at the time when it was granted. In any event such a consideration could not have weighed with the revisional authority after a lapse of five years of the grant of the land. On the ratio of the decision of the Supreme Court in Raghav Natha (supra) the Collector had exercised revisional jurisdiction much beyond the reasonable permissible time. In the facts and circumstances of the case, the impugned order of the Collector was, therefore, arbitrary, unjust and in excess of the revisional jurisdiction vested in the concerned authority and could not have been upheld by the Government. The impugned orders of the Collector and the State Government at Annexures J and L to the petition, are, therefore, hereby set aside. Rule is made absolute accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

* Pansala.